



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG 2017-0294]

RIN 1625-AA00

Safety Zone; Sabine River, Orange, Texas

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Sabine River adjacent to the public boat ramp located in Orange, TX. This safety zone is necessary to protect persons and vessels from hazards associated with a high speed boat race competition. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, Port Arthur.

DATES: This rule is effective from 8:30 a.m. on May 20, 2017 through 6 p.m. on May 21, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0294 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409-719-5086, email Scott.K.Whalen@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port, Port Arthur
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on March 22, 2017 that this boat racing event is scheduled to take place from May 20 to 21, 2017. Upon full review of the event details, the Coast Guard determined that additional safety measures were necessary due to potential navigational hazards present during the high speed boat race. The safety zone needs to be established by May 20, 2017. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing

the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because regulatory action is necessary to limit access to the area of the high speed boat races, protecting participants, spectators, and other persons and vessels from the potential hazards during a high speed boat race on a navigable waterway. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners (BNM) and the event will be advertised in the Local Notice to Mariners (LNM).

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Port Arthur (COTP) has determined that the potential hazards associated with high speed boat races are a safety concern for vessels operating on the Sabine River. This rule is needed to protect participants, spectators, and other persons and vessels in the navigable waters within the safety zone during the scheduled races.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:30 a.m. on May 20, 2017 through 6 p.m. on May 21, 2017. The safety zone covers all navigable waters of the Sabine River, shoreline to shoreline, adjacent to the public boat ramp located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05'50"N 93°43'15"W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05'33"N (NAD83). The duration of the safety zone

is intended to protect participants, spectators, and other persons and vessels, in the navigable waters of the Sabine River during the high speed boat races. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone is over a 2-day period and enforcement during the effective times, enforcement periods will include scheduled breaks, providing opportunity for vessels to transit through the affected area. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessel to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on vessel owners or operators.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone during a 2-day period that will prohibit entry within the zone without permission of the Captain of the Port. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Record of Environmental Consideration are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary §165.T08-0294 to read as follows:

§ 165.T08-0294 Safety Zone; Sabine River, Orange, Texas.

Location. The following area is a safety zone: certain navigable waters of the Sabine River adjacent to the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of old Navy Pier One at 30°05'50"N 93°43'15"W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05'33"N (NAD83).

(a) **Effective period.** This rule is effective from 8:30 a.m. on May 20, 2017 through 6 p.m. on May 21, 2017. Enforcement during the effective period will allow for scheduled breaks allowing vessels to pass through the safety zone. Notice of scheduled breaks will be provided as indicated under paragraph (c) of this section.

(b) **Regulations.** (1) Under the general safety zone regulations in §165.23 of this part, entry into this zone is prohibited to all persons and vessels except those vessels specifically authorized by the Captain of the Port, Port Arthur (COTP) or a

designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channel 13 or 16, or by phone at by telephone at 409-719-5070.

(3) All persons and vessels shall comply with the lawful orders or directions given to them by the COTP or COTP's designated representative.

(c) Information broadcasts. The Coast Guard will inform the public through broadcast notices to mariners of channel restrictions and Vessel Traffic Service advisories on VHF-FM channel 65A.

Dated: May 16, 2017

R. S. Ogrydziak
Captain, U.S. Coast Guard,
Captain of the Port, Port Arthur, Texas
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